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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Municipalities – Police Officers – Law
Enforcement – Police Departments –
Liability – Funerals – Geneva County

The town council may, by ordinance,
permit or require the police department to
escort funerals.

Police vehicles may use flashing blue or
red lights during the escort.

Questions of liability are not generally
answered by the Attorney General.

Dear Mr. Eubanks:

This opinion of the Attorney General is issued in response to your request
on behalf of the Slocomb Town Council.

QUESTIONS

(1) May the Slocomb Town Council permit its
police department to escort funeral processions, which
would include blocking intersections and directing
traffic?

(2) Is the town council authorized to direct the
department to escort funerals when, because of limited
manpower, a police vehicle would merely lead the
procession?

(3) May the department use flashing blue or red
lights during the escort?

(4) If an accident occurred because of failure to recognize the police vehicle's lights and following the traffic light instead, would the town's authorization overcome any potential liability?

(5) Is the officer subject to personal liability when an accident occurs with one of the cars in the funeral and the striking vehicle has the right-of-way?

FACTS AND ANALYSIS

Your request states as follows:

The police force of the Town of Slocumb has escorted funeral processions for years. The town does not have an ordinance or resolution governing or directing escorts. The police chief has presented this issue to the city attorney, as well as the town, and has several concerns in continuing to perform this action. This is a small town with a very limited force, which, even if they used every officer and police vehicle, would still make it very difficult to block every intersection during some, if not most, funerals. Most escorts involve one vehicle with flashing lights leading the procession through the intersections with no officers directing traffic at or blocking intersections. Obviously, the concern is liability for the town, chief, and officers. There is also concern as to the specific authority for use of flashing lights for escorts, which appears to be a nonemergency.

Alabama law does not specifically address funeral escorts. Nonetheless, “[g]enerally, municipal police are authorized to direct traffic.” McQuillin, *Municipal Corporations* § 24.622 (3rd ed. 2008). Alabama is no exception. Title 32 of the Code of Alabama relating to motor vehicles and traffic, while not including an affirmative statement that an officer may direct traffic, contains a number of provisions that address traffic control. Section 32-5A-31 states that “[t]he driver of any vehicle shall obey the instructions of any official traffic-control device . . . **unless otherwise directed by a police officer.**” ALA. CODE § 32-5A-31 (2010) (emphasis added). Section 32-5A-210 tracks this language for pedestrians. ALA. CODE § 32-5A-210 (2010). Section 32-5A-4 is more explicit, mandating “compl[iance] with any lawful order or direction of any police officer or fireman invested by law with authority to direct, control or

regulate traffic.” ALA. CODE § 32-5A-4 (2010). These statutes, operating together, provide authority for law enforcement to direct traffic.

This reading is supported by opinions to Honorable Steve Means, Mayor, City of Gadsden, dated June 14, 1984, A.G. No. 84-00318 and to Honorable Earl F. Hilliard, State Senator, 15th District, dated July 27, 1982, A.G. No. 82-00477. These opinions, in discussing off-duty police officers providing private security, acknowledged that on-duty officers could provide traffic control at a baseball stadium.

In contrast to officers personally directing traffic, a funeral escort is a form of traffic control in which police use their vehicles and flashing lights. In addressing questions of first impression, this Office often turns to the courts of other states for guidance, particularly when, like here, another court has addressed an identical issue or statute. Although the Alabama appellate courts have yet to consider funeral escorts, the Court of Appeals of Texas has done so. The Court, in applying similar statutes, particularly one identical to section 32-5A-4, “determined that escorting a motorcade for the purpose of directing traffic is a law enforcement function.” *Blackwell v. Harris Cnty.*, 909 S.W.2d 135, 140 (Tex. App.-Houston [14th Dist.] 1995).

Therefore, this Office answered positively when faced with the similar question of whether the town council could authorize police to escort the local high school football team, band, and school organizations on out-of-town games and activities. Opinion to Honorable James Murphy, Mayor, Town of Excel, dated March 10, 1995, A.G. No. 95-00148. That opinion relied on the council’s “power to establish, organize and set the policy for the municipal police department pursuant to Code of Alabama 1975, § 11-43-55.” *Id.* at 2.

The council’s mandating, as opposed to permitting, an escort was not at issue in the *Murphy* opinion as the larger issue was whether the police could provide an escort outside the police jurisdiction. The police had been engaging in these activities with the council’s approval. In other opinions, this Office has considered disputes between the council and mayor in police affairs to determine which has final authority. Opinions to Honorable T. Euclid Rains, Member, House of Representatives, dated April 10, 1999, A.G. No. 89-00243; Honorable Roger D. Burton, Attorney, Town of Kimberly, dated February 3, 1984, A.G. No. 84-00153; Honorable Glenda Smith, Town Clerk, Town of Eclectic, dated July 8, 1983, A.G. No. 83-00384; Julian B. Brackin, Attorney, Town of Summerdale, dated August 10, 1979, A.G. No. 79-00263. In concluding that council authority prevailed, those opinions construed section 11-43-81 of the Code of Alabama, which states, in pertinent part, as follows:

The mayor shall be the chief executive officer,
and shall have general supervision and control of all

other officers and the affairs of the city or town, ***except as otherwise provided in this title.***

ALA. CODE § 11-43-81 (2008) (emphasis added).

The *Smith* opinion explains the reasoning of those opinions as follows:

While the mayor of a municipality is the chief executive officer of a municipality with all powers accompanying such a designation, . . . [t]he specific provisions of Section 11-43-55 vest directly in the council authority over the establishment and organization of a police department. ***Where, as here, the council has acted, by ordinance or resolution, to exercise that authority, the mandates of the council must be followed.***

Smith, at 2-3 (emphasis added). The *Rains* opinion likewise emphasizes that “actions by the council to set policy for the police department should be made by ordinance or resolution.” *Rains*, at 2-3.

Those opinions additionally establish that council policy over police may afford discretion to police officials to take certain action, or it may be directive. The *Rains* opinion determined that the council could allow other alternatives for a dispatcher other than working at city hall, i.e., the council could outright permit the dispatcher to work at home or delegate that decision to the police chief. The *Burton* opinion determined that the council could “limit or restrict the number of shifts to be worked . . . and . . . the number of police officers who shall be on duty during a particular shift.” *Burton* at 2. The *Brackin* opinion determined that the council could set the speed limits to be observed by officers pursuing misdemeanor offenders.

Furthermore, this Office has opined generally on the broad legislative power of the council. This Office thoroughly discussed the policy-making relationship between the council and various city department heads, including the police department, in an opinion to Honorable James E. Hill, Jr., City Attorney, City of Leeds, dated June 4, 1992, A.G. No. 92-00289. That opinion unequivocally stated that “the authority to formulate operating procedures for city departments belongs to the city council.” *Id.* at 5. This Office has been even more direct, remarking that “[t]he council is the ultimate source of power in the mayor-council city or town, and in its exercise of this power, the council determines the extent to which the governmental and corporate functions of the municipality are exercised.” Opinion to Honorable Carole D. Marks, President, Hueytown City Council, dated April 9, 2007, A.G. No. 2007-076, at 3, *quoting*

Perry C. Roquemore, Jr., & Ken Smith, Alabama League of Municipalities, *Handbook for Mayors and Councilmembers* 73 (2004).

Consistent with these authorities, despite the police chief's concerns, the Slocumb Town Council may, by ordinance, permit or require the police department to escort funerals. The issue of whether the town should permit or require its police department to escort funerals and the details of such an ordinance involves the consideration of numerous factors that cannot be addressed by an opinion of the Attorney General. Liability for the town and its officers is certainly one of the factors to consider when setting policies. Accordingly, the town should consult with the town's liability insurance carrier to determine if providing these escorts would be in the best interest for the town and to assist in determining any potential liability and the liability coverage available. The ultimate decision to adopt a policy and the details of the policy rest with the town council.

Your third question is whether the police may use flashing blue or red lights during a funeral escort. Section 32-5A-115(a) provides that motorists must yield the right-of-way to an authorized emergency vehicle flashing its lights. ALA. CODE § 32-5A-115(a) (2010). It is clear that a "police vehicle[]" is an "authorized emergency vehicle." ALA. CODE § 32-1-1.1(3) (2010). Police lights may be red or blue. ALA. CODE § 32-5A-115(c) (2010). Accordingly, police vehicles may utilize either of their lights in this circumstance. This opinion does not address police light usage other than in funeral escorts.

Finally, questions of liability involve factual determinations that are generally not answered by the Attorney General. Opinions to Honorable Ashley Rich, Mobile County District Attorney's Office, dated September 23, 2011, A.G. No. 2011-103 (overruled on other grounds); Honorable Chad A. Fincher, Member, House of Representatives, dated December 31, 2009, A.G. No. 2010-027; Honorable James B. Johnson, Baldwin County Sheriff, dated January 30, 2006, A.G. No. 2006-044; Honorable Freddie C. Green, City Council, City of Greensboro, dated September 13, 1999, A.G. No. 99-00280; *Murphy*; *Means*. As the *Murphy* opinion stated in examining police escorts of high school organizations, "[t]here is no general rule regarding the extent of liability as each situation must be analyzed separately." *Murphy*, at 2.

CONCLUSION

The town council may, by ordinance, permit or require the police department to escort funerals.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/GWB

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